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 8 **UNITED STATES DISTRICT COURT**  
 9 **Southern District of California**

10  
 11 SAN DIEGO MINUTE MEN ) Case Number: 08CV0210 WQH [RBB]  
 12 Plaintiff, )  
 13 vs. )  
 14 DALE BONNER in his Official Capacity as )  
 Agency Director, Business, Transportation )  
 and Housing Agency; WILL KEMPTON in )  
 his Official Capacity as CalTrans Director; )  
 15 PEDRO ORSO-DELGADO in his Official )  
 Capacity as Caltrans District Director and )  
 16 DOES 1 through 50, )  
 17  
 18 Defendants. )  
 19

**PLAINTIFF'S MEMORANDUM OF  
 POINTS AND AUTHORITIES IN REPLY  
 TO OPPOSITION TO MOTION FOR  
 PRELIMINARY INJUNCTION &  
 EXHIBITS**

20 Hearing Date: April 17, 2008  
 Hearing Time: 1:30 p.m.  
 Courtroom: Courtroom 4  
 Judge: William Q. Hayes

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## I. SUMMARY OF ARGUMENT

2 Defendants' position can be summarized as follows: Caltrans, opposing the message spoken by  
3 the name "San Diego Minute Men" and fearing controversy and reprisals from certain state  
4 legislators and a few constituents who opposed that message,<sup>1</sup> acted to preclude Plaintiff from  
5 participating in the program at the location for which Defendants previously issued Plaintiff a site-  
6 specific permit. Defendants, cognizant of the constitutional obstacles, argue they can accomplish  
7 their viewpoint-based discrimination by asserting a speculative "safety" issue and, based on that  
8 subjective, unsupported conclusion, revoke Plaintiff's permit and remove the subject segment from  
9 the program. Of course, the so-called "safety" issue is solely tied to the message of Plaintiff.  
10 Defendants agree that the location itself is safe with no history of any safety issue ever. *Orso-*  
11 *Delgado depo.*, [87:12-25 and depo. Ex. 16], Ex. 1, pp. 17 and 19.

12 The discretion Defendants attempt to wield is reminiscent of landlords who, when approached  
13 by a potential renter who happened to be a person of color, would “suddenly” decide they weren’t  
14 going to rent their property to “anyone,” only to immediately “change their mind again” as soon as  
15 the person of color had driven away (except here, Defendants had *already* entered into a legal and  
16 binding permit with Plaintiff, then revoked it. *See. Schwilk Decl.* [Doc#2, Att.1], ¶7 and Ex. 4. It  
17 is this kind of discrimination that Defendants ask this Court to condone.

18 As is plain from a reading of Defendants' Opposition to Plaintiff's Motion for Preliminary  
19 Injunction [Doc #26], Defendants' argument against granting the relief requested is premised on two  
20 propositions: First, that Caltrans has the unfettered discretion to remove the segment of highway for  
21 which it granted Plaintiff a site-specific permit for "reasons of safety and operational concerns."  
22 Second, Defendants assert that the movement of Plaintiff's adopted highway from the location  
23 which it permitted to a more remote location was not violative of Plaintiff's rights.

24 As testified to by Defendant Will Kempton, the Caltrans Director (who made the decision to

<sup>1</sup> *Deposition of Pedro Orso-Delgado* taken April 8, 2008 (“*Orso-Delgado depo.*”), [86:14-20], Ex. 1, p. 16]. Referenced portions of Mr. Orso-Delgado’s deposition are attached hereto as Exhibit 1. The Complete transcript has been lodged with the Court [Doc#27]. References include both transcript pagination in format *[page:line]* and consecutive exhibit page numbering.

1 revoke Plaintiff's site specific permit<sup>2</sup> and Defendant Pedro-Orso Delgado, the District 11 Director  
 2 for Caltrans, there is not now, nor has there ever been, *any safety issue* which attaches to the location  
 3 designated ND 5: SD66.3-SD68.3. *Orso-Delgado depo.*, [87:12-25 and depo. Ex. 16], Ex. 1, pp. 17  
 4 and 19. Indeed, the testimony of Orso-Delgado demonstrates that Mr. Orso-Delgado was concerned  
 5 about the *message* of Plaintiff's name on the recognition sign. *Orso-Delgado depo.*, [87:23-25], Ex.  
 6 1, p. 17. Mr. Orso-Delgado fully recognized that to revoke or otherwise change Plaintiff's site-  
 7 specific permit for that reason was a violation of Plaintiff's rights ( *Orso-Delgado depo.*, [74:22 -  
 8 76:12], Ex. 1, pp. 11-13) but, determined to do so anyway, then concocted an unsupported "safety  
 9 concern" out of thin air in an effort to hide Defendants' viewpoint discrimination. But even in that  
 10 effort Defendants failed, because the only "safety" issue Defendants could manufacture was  
 11 conjecture that illegal immigrant traffic passing by Plaintiff's recognition sign on the freeway would  
 12 be compelled to respond to Plaintiff's message in an "unsafe" way. Of course, granting such a  
 13 "heckler's veto" in violation of Plaintiff's First Amendment Rights is improper. The falsity of  
 14 Defendants purported justification (that locations adjacent to border checkpoints are unsafe) is  
 15 further demonstrated by the fact that, *except for the Plaintiff*, the permittees for locations adjacent  
 16 to border checkpoints would be allowed to keep their permits until the natural expiration of that  
 17 permit. *Orso-Delgado depo.*, [70:1-14], Ex. 1, p. 10. If such locations were *actually* unsafe, would  
 18 Defendants allow them to remain in the program for years? Why the unequal treatment of Plaintiff?

19 Also, the Guidebook for the AAH Program clearly provides the guidelines for determining  
 20 whether a location is "safe" and appropriate for adoption. *See Program Guidelines and*  
*Coordinator's Handbook* [Doc #19, Att. 2], at Ch. 7. Defendants admit that the subject segment has  
 22 been determined "safe." *Orso-Delgado depo.*, [87:12-25 and depo. Ex. 16], Ex. 1, pp. 17 and 19.

23 The second premise underlying Defendants' Opposition, that Caltrans "only moved" Plaintiff's  
 24 permit to a remote location, again is repugnant to the Constitution. The law is clear that one cannot  
 25 discriminate against a speaker because of that's speaker's message and, as a result, relegate that

27 <sup>2</sup> *Deposition of William Alan Kempton* taken on March 20, 2008 ("Kempton depo.") [47:20-  
 28 48:8], Ex. 2, pp. 27-28. Referenced portions of Mr. Kempton's deposition are attached hereto as  
 Exhibit 2. The complete transcript has been lodged with the Court [Doc. # 27].

1 speaker's message "behind the barn." As Director Kempton testified, Plaintiff's is the only permit  
 2 ever moved based on the Plaintiff's message as represented by its recognition sign. *Kempton depo.*  
 3 [61:22-25], Ex. 2, p. 29. Betraying the myth that the border checkpoint renders the segment unsafe,  
 4 Mr. Orso-Delgado testified that if there were complaints about the new location of Plaintiff's permit  
 5 (nowhere near a border checkpoint), he would move their location to an even more remote location.  
 6 *Orso-Delgado depo.*, [84:19-85:25], Ex. 1, pp. 14-15. The "hecklers" have already promised such  
 7 a response. *Orso-Delgado depo.*, portion of depo. Ex. 7], Ex. 1, p. 18. But, references to moving  
 8 Plaintiff's permitted location is conjecture: ***Plaintiff's recognition sign has never been re-erected***  
 9 ***in any location.*** *Orso-Delgado depo.*, [8:11-22], Ex. 1, p. 2. Thus, though unavailing for  
 10 Defendants in any event, the argument that Plaintiff has not suffered damage because its location has  
 11 merely been moved is specious because Plaintiff's recognition sign has never been re-erected  
 12 ***anywhere.*** As set forth below,<sup>3</sup> Plaintiff has asserted all elements necessary to obtain the relief  
 13 requested. The motion for preliminary injunction should be granted.

14

15 **II. LEGAL DISCUSSION**

16

17 **A. DEFENDANTS' DECISION TO REVOKE PLAINTIFF'S SITE-SPECIFIC PERMIT**  
 18 **WAS BASED ON PLAINTIFF'S VIEWPOINT, NOT SAFETY**

19 Defendant Orso-Delgado learned about the adoption of location ND 5: SD66.3-SD68.3 by the  
 20 San Diego Minutemen after Plaintiff's site-specific permit had already been issued. Once he learned  
 21 of the permit, he decided that he wanted the sign taken down. He learned, however, that there were  
 22 no safety issues with the location; in fact, the location had been used for years with no safety issues.  
 23 *Orso-Delgado depo.*, [87:12-25 and depo. Ex. 16], Ex. 1, pp. 17 and 19.

24 But Defendants did not want Plaintiff's sign to remain. So they took it upon themselves to

25

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26       <sup>3</sup> These issues are also addressed in Plaintiff's moving papers [Doc #13, Attach. 1], as well  
 27 as in its Opposition to Defendants' Motion to Dismiss [Doc #25 & Attach 1]. Rather than repeat the  
 28 discussion in these documents and in light of the fact that the hearing on each motion is the same  
 day, Plaintiff incorporates each herein by this reference as though fully set forth at length hereat.

1 embark on a search for some reason to revoke the Plaintiff's permit. Defendants had the California  
2 Highway Patrol conduct a secret investigation of Plaintiff (*Kempton depo.* [89:2-92:3], Ex. 2, pp.  
3 33-36), but found nothing inappropriate in Plaintiff's philosophy. (*Kempton depo.* [23:17-24:5], Ex.  
4 2, pp. 23-24. Next Defendants sought to find a "safety" issue they could hang their hats on. But they  
5 found that the subject highway segment had "no safety issue." *Orso-Delgado depo.*, [87:12-25 and  
6 depo. Ex. 16], Ex. 1, pp. 17 and 19.

7       Lack of *any empirical date* notwithstanding, Defendants made a conscious decision to “backfill”  
8 their viewpoint-based decision to revoke Plaintiff’s site-specific permit by asserting that a “safety”  
9 issue arose and, based thereon, revoked Plaintiff’s permit and purportedly removed the entire  
10 segment from the program in order to preclude Plaintiff from maintaining that section of the  
11 highway. However, the purported “safety” claim is a fabrication. In fact, there is no evidence to  
12 suggest *any* safety issue is involved with the subject location. *Orso-Delgado depo.*, [87:12-25 and  
13 depo. Ex. 16], Ex. 1, pp. 17 and 19. Instead, A closer look at the purported “safety issue” reveals  
14 that it is *really* based on purely subjective speculation about what future illegal immigrant motorists  
15 *might* do when seeing the Plaintiff’s courtesy sign. *Orso-Delgado depo.*, [24:21-26:5], Ex. 1, pp.  
16 7-9. No study, no research and no data. *Orso-Delgado depo.*, [21:14-19], Ex. 1, p. 5. Just the  
17 subjective musings of Defendants. *Kempton depo.* [13:25-14:4], Ex. 2, pp. 22-22.

18 Apparently realizing that it would be harder to justify removing only Plaintiff's permitted  
19 segment from the program based on its proximity to the border checkpoint while there were several  
20 other such segments in the AAH system, Defendants concocted a scheme to provide "cover" for this  
21 decision by suggesting that *all* segments of the Adopt-A-Highway program adjacent to border  
22 checkpoints from the system all together. (Note that, according to Caltrans Director Kempton, no  
23 such removal has even occurred *Kempton depo.* [43:1-44:11], Ex. 2, pp. 25-26.) But even in that  
24 effort, Defendants' actions were constitutionally impermissible. As Orso-Delgado testified, while  
25 he "planned" on removing all segments of the highways adjacent to border checkpoints, the *only*  
26 permit which was revoked was that of Plaintiff. As to other permittees, Mr. Orso-Delgado testified:

27 Q: IS THAT SIGN OKAY IN THAT LOCATION, AS FAR AS  
28 YOU'RE CONCERNED?  
ORSO-DELGADO: BASED ON THE DIRECTION THAT I HAVE GIVEN MR.

1 VALLE, AS SOON AS THAT ADOPTEE EITHER LAPSSES OR  
 2 TERMINATES IN THIS LOCATION, WE WILL NOT HAVE  
 3 THIS LOCATION ONE OF THE ADOPTABLE SEGMENTS  
 4 AGAIN?

5 Q THAT'S ON HIGHWAY 15?

6 ORSO-DELGADO: YES. THE SAME WILL HAPPEN ON INTERSTATE 8, AND  
 7 STATE ROUTE 94, AND AT THE CHECKPOINT ON I-5 WHERE  
 8 THE ACTUAL BORDER IS, AND ON STATE ROUTE 905.

9 *Orso-Delgado depo.*, [70:1-14], Ex. 1, p. 10.

10 A clearer violation of equal protection is difficult to formulate. While all other permittees in  
 11 similar locations are allowed to keep their locations until the permit expires, only the San Diego  
 12 Minutemen's permit was instantaneously revoked. Why? Because of Plaintiff's message. *Orso-*  
 13 *Delgado depo.*, [21:20 - 22:10], Ex. 1, pp. 5-6. Moreover, if there *really* were a safety issue  
 14 concerning the locations adjacent to border checkpoints, why would Caltrans wait for permits to  
 15 expire to remove them from the program? Of course, they would not. It's only the San Diego  
 16 Minute Men's segment that was *revoked*. This is further evidence that the "safety concern" is  
 17 nothing but a ruse. Such discrimination by Defendants cannot stand.

18

19 **B. PLAINTIFF IS ENTITLED TO A PRELIMINARY INJUNCTION.**

20 To establish entitlement to a preliminary injunction, a party must show irreparable injury and  
 21 a likelihood of success on the merits. *Ashcroft v. American Civil Liberties Union*, 542 US. 656, 665  
 22 124 S.Ct. 2783, 159 L.Ed.2d 690 (2004).

23 In this case, Plaintiff has demonstrated both elements. As set forth more fully below, Plaintiff's  
 24 claims arise from the type of conduct by defendants which has been scrutinized many times by the  
 25 courts, and found to be violative of constitutional protections. Where a party's constitutional rights  
 26 are violated, irreparable injury is demonstrated. *Associated Gen. Contractors of Calif. vs. Coalition*  
 27 *for Economic Equity*, 950 F.2d 1401, 1410 (9<sup>th</sup> Cir. 1991).

28 Moreover, since the issues raised by Plaintiff herein are similar to those where other Plaintiff's  
 29 have prevailed, Plaintiff has demonstrated a "reasonable probability of success." *Gilder v. PGA*  
 30 *Tour, Inc.*, 936 F.2d 417, 422 (9<sup>th</sup> Cir. 1991). Indeed, this case so analogous to *Lewis v. Wilson*,  
 31 253 F.3d 1077 (8<sup>th</sup> Cir. 2001) as to render the entire analysis in that case applicable here.

32 Here, the facts demonstrate that Defendants made a decision to revoke Plaintiff's site-specific

1 permit based on the Plaintiff's viewpoint - a viewpoint associated with Plaintiff's name. Once they  
 2 learned of the permit's issuance, Defendants set on a course to come up with a reason to revoke it  
 3 – clearly because they found Plaintiff's message repugnant and sought to avoid the controversy  
 4 surrounding that message. *Orso-Delgado depo.*, [13:14-14:23], Ex. 1, pp. 3-4. While they purported  
 5 to base the decision on "safety," Defendants' testimony makes clear that any claim of safety was  
 6 based on nothing more than speculation and conjecture – utterly fabricated. *Orso-Delgado depo.*,  
 7 [21:14-19], Ex. 1, p. 5. In fact, all objective data given to defendants clearly demonstrated that the  
 8 location was safe and had been adopted as part of the program for years. *Orso-Delgado depo.*,  
 9 [87:12-25 and depo. Ex. 16], Ex. 1, pp. 17 and 19. It is clear that, in Defendants minds, it was  
 10 Plaintiff's viewpoint that was "dangerous," thereby creating a "safety" issue.

11

12 **1. Plaintiff Will Prevail on its First Amendment Claim.**

13 In the Ninth Circuit and other jurisdictions, Courts have recognized that roads, highways and  
 14 sidewalks (thoroughfares) have been classified as public fora so long they are often spoken of as  
 15 "traditional public fora" and alleged speech abridgement at such fora are reviewed using the highest  
 16 level of scrutiny. *See, e.g. Comite De Jornaleros De Redondo Beach v. City of Redondo Beach*, 475  
 17 F.Supp.2d 952, (C.D. Cal. 2006); *Hale v. Department of Energy*, 806 F.2d 910, 917 (9<sup>th</sup> Cir. 1986)  
 18 [one factor bearing on the reasonableness of restriction at one location is the existence of adjacent  
 19 Highway as public forum for expressive activity]. Even if privately owned, the shoulder of a public  
 20 highway is a public forum. *Jackson v. City of Markham*, 773 F.Supp. 105, 107 (N.D. Ill. 1991).

21 Defendants testified that the speech value of courtesy sign and the Adopt-A-Highway program  
 22 was undeniable. *Kempton depo.* [62:23-64:6] Ex. 2, pp. 30-32. Thus, even if a highway were not  
 23 already a traditional public forum, it became designated as such when Caltrans implemented its  
 24 Adopt-A-Highway Program including recognition signs bearing the name of the program  
 25 participants.

26 But even assuming *arguendo* that a highway is a non-public forum, any attempt to regulate  
 27 speech *must be viewpoint neutral*. *Cornelius v. N.A.A.C.P. Legal Defense and Educ. Fund, Inc.*, 473  
 28 U.S. 788, 800, 105 S.Ct. 3439, 87 L.Ed.2d 567 (1985). In this case, the decisions made by

1 Defendants were based *solely* on the viewpoint of Plaintiff and their subjective and unsupported  
 2 concern that Plaintiff's message (as identified with its name) would engender controversy.  
 3 Defendants acknowledge that there is absolutely *no* safety issue relating to the location itself – it was  
 4 determined safe for the program and was adopted by others for years prior to Plaintiff's permit.  
 5 Moreover, in their effort to “get around” the first amendment “impediments” which Defendants  
 6 recognized precluded their viewpoint discrimination, they specifically inquired into the safety issues  
 7 and found none. In short, the purported “safety” issue, which arises only from conjecture about what  
 8 others “might” do if the Plaintiff's permit were restored, is an utter fabrication of convenience.

9 [T]he mere possibility of a violent reaction to . . . speech is simply not a  
constitutional basis on which to restrict her right to speak. [Citations omitted.]  
 10 “The argument amounts to little more than the self-defeating proposition that to  
 11 avoid physical censorship of one who has not sought to provoke such a response by  
 12 a hypothetical coterie of the violent and lawless, the States may more appropriately  
 13 effectuate that censorship themselves,” [Cohen v. California, 403 U.S. 15, 23  
 14 (1971)]. Even if we assume that the DOR made no judgment about the viewpoint  
 15 of [Plaintiff's] speech, therefore, we reject its attempt to censor Ms. Lewis's speech  
because of the potential responses of its recipients. The first amendment knows no  
 16 heckler's veto.

17 *Lewis, supra*, 253 F.3d at 1081-1082. [Emphasis supplied.]

18 The fallacy of Defendants' position is further demonstrated by the fact that, prior to Defendants'  
 19 revocation of Plaintiff's permit, Plaintiff's members had *already* performed a cleanup of their  
 20 permitted section of highway without the occurrence of any of the “parade of horribles” dreamed up  
 21 by Defendants to excuse their conduct. *See Decl. of Jeff Schwilk* [Doc #2, Att. 1] at ¶5 and Ex. 2.

## 20 2. Plaintiff Will Prevail on its Equal Protection Claim.

21 In an effort to diminish Plaintiff's right to speech, Caltrans offered to move Plaintiff's site-  
 22 specific permit to a location far more remote than the site for which it was originally issued. Of  
 23 course, such an effort to “hide” Plaintiff's speech is constitutionally impermissible. As noted in  
 24 *Hopper v. City of Pasco*, 241 F.3d 1067 (9<sup>th</sup> Cir. 2001):

25 The city steadfastly maintains that its exclusion of plaintiffs' works was not  
 26 “censorship” since Hopper and Rupp “have been free to show their art throughout  
 27 the City, *other than [at] city hall.*” The art, in Pasco's view, was merely ejected  
 28 from the parlor, not thrown off the farm. But relegating the art to the barnyard does  
not pass First Amendment scrutiny.

*Id.*, at p.1081-1082. [Underlining supplied. Other emphasis in original.] [Footnote omitted.]

1 No other permittee has ever had its permit revoked and moved to another location because of  
 2 its viewpoint. Clearly, this demonstrates differential treatment of Plaintiff based upon its message.

3 Mr. Orso-Delgado testified that it was his intention to remove Plaintiff from its location and,  
 4 in an effort to create a plausible excuse for doing so which might survive constitutional scrutiny,  
 5 suggest that all segments of highway adjacent to border checkpoints would be removed from the  
 6 program all-together. However, Caltrans Director Kempton testified that the location permitted to  
 7 Plaintiff *had not* been removed from the program. *Kempton depo.* [43:1-44:11], Ex. 2, pp. 25-26.  
 8 Moreover, Mr. Orso-Delgado admitted that, while it was his intention to remove all such segments  
 9 from the program, all permittees *other than Plaintiff* would be allowed to keep their locations  
 10 adjacent to the border checkpoint until the expiration of their five-year permit. Only the San Diego  
 11 Minute Men's permit was revoked immediately. *Orso-Delgado depo.*, [70:1-14], Ex. 1, p. 10.  
 12 Again, this is the paradigm of an equal protection violation.

13

14 **3. Plaintiff will Prevail on Due Process Claims.**

15 The San Diego Minute Men have alleged claims arising from both procedural and due process  
 16 violations by Defendants. In both cases, the violations are manifest and it is clear that Plaintiff will  
 17 prevail on its claims.

18 The requirements for establishing a violation of due process are well established. Before a  
 19 person is deprived of a protected interest, he must be afforded opportunity for some kind of a  
 20 hearing, 'except for extraordinary situations where some valid governmental interest is at stake that  
 21 justifies postponing the hearing until after the event.' *Boddie v. Connecticut*, 401 U.S. 371, 379 91  
 22 S.Ct. 780, 28 L.Ed.2d 113 (1971).

23 'Liberty' and 'property' are broad and majestic terms. They are among the '(g)reat  
 24 (constitutional) concepts . . . purposely left to gather meaning from experience. . . .  
*National Mutual Ins. Co. v. Tidewater Transfer Co.*, 337 U.S. 582, 646 (Frankfurter, J., dissenting).

25 Property interests protected by procedural due process extend well beyond actual ownership of  
 26 real estate, chattels, or money. *See, e.g., Connell v. Higginbotham*, 403 U.S. 207, 208, 91 S.Ct.  
 27 1772, 29 L.Ed.2d 418 (1971). The evidence already adduced shows that Defendants' conduct  
 28 impacted on Plaintiff's right to free speech. As noted above, the participation in the AAH program

1 *is speech. Knights of Ku Klux Klan v. Ark. State Hwy and Transp. Dept.*, 807 F. Supp. 1427 (W.D.  
 2 Ark. 1992); *Cuffley v. Mickes*, 44 F.Supp.2d 1023 (E.D. Mo. 1999). As such, Plaintiff has  
 3 demonstrated a fundamental right for which the procedural due process protections afforded by the  
 4 Fourteenth Amendment apply.

5 Even absent the first amendment issue, Plaintiff still has asserted a right subject to due process  
 6 requirements. As stated in *Board of Regents of State Colleges v. Roth*, 408 U.S. 564, 92 S.Ct. 2701,  
 7 33 L.Ed.2d 548 (1972):

8 To have a property interest in a benefit, a person clearly must have more than an  
 9 abstract need or desire for it. He must have more than a unilateral expectation of it.  
 10 He must, instead, have a legitimate claim of entitlement to it. It is a purpose of the  
 11 ancient institution of property to protect those claims upon which people rely in  
 12 their daily lives, reliance that must not be arbitrarily undermined. It is a purpose of  
 13 the constitutional right to a hearing to provide an opportunity for a person to  
 14 vindicate those claims.  
*Roth, supra*, 408 U.S. at 577.

15 In this case, Plaintiff has alleged such a property interest. As noted by Caltrans' Director  
 16 Kempton, the site-specific permit is a contract (*Kempton depo.* [48:3-7], Ex. 2, p. 28), which  
 17 Defendants revoked. Plaintiff was granted and issued a site-specific encroachment permit for the I-5  
 18 NB location. Pursuant to the Adopt-A-Highway program guidelines, such a permit has a duration  
 19 of five years. Thus, Plaintiff had a "legitimate claim of entitlement" to the permit.

### 18 C. THE RELIEF REQUESTED PRESERVES THE *STATUS QUO ANTE LITEM*.

19 Defendants attempt to brand the relief sought as a "mandatory" injunction and thereby invoke  
 20 more stringent scrutiny of Plaintiff's request. While it is true that, at this point in time, the injunctive  
 21 relief will require Defendants to put Plaintiff's recognition sign back up, such relief is really  
 22 returning the parties to the *status quo ante litem* and stops the continued irreparable injury to  
 23 Plaintiff. As the Ninth Circuit noted:

24 The status quo ante litem refers not simply to any situation before the filing of a  
 25 lawsuit, but instead to "the last uncontested status which preceded the pending  
 26 controversy," [citations]. In this case, the status quo ante litem existed before  
 27 Disney began using its allegedly infringing logo. The interpretation of this concept  
 28 that Disney advocates would lead to absurd situations, in which plaintiffs could  
*(Goto.com, Inc. v. The Walt Disney Company*, 202 F.3d 1199, 1210 (9<sup>th</sup> Cir. 2000).

1 In this case, the last uncontested status was where the site specific permit issued by Caltrans to  
2 Defendant was in effect and Plaintiff's recognition sign was in place. Defendants cannot prevent a  
3 return to that position by its infringing conduct. But even under the analysis for mandatory  
4 injunctions, Plaintiff has demonstrated its entitlement to relief.

5 Defendants also argue that the Court cannot grant the Preliminary Injunction because it affords  
6 Plaintiff substantially the relief Plaintiff would obtain after trial on the merits" and by arguing it is  
7 "mandatory" in nature. As to the first proposition, the injunctive relief requested is sought to *stop*  
8 *the continued violation of Plaintiff's Constitutional rights*. However, this is not substantially all the  
9 relief sought by Plaintiff. Plaintiff has asserted a claim for monetary damages pursuant to 42 U.S.C.  
10 §1983 to compensate Plaintiff for Defendants' violations of that statute. *That* is the substantive relief  
11 sought. The injunctive relief is sought to *avoid further irreparable injury*.

### **III. CONCLUSION**

13       Unhappy with Plaintiff’s viewpoint and the political pressure placed on them by some  
14   legislators and a handful of constituents who opposed that viewpoint, Defendants determined that  
15   Plaintiff’s message must be silenced or, at a minimum, isolated and muffled. Though attempting a  
16   ruse based on “safety concerns,” it is clear that it is Plaintiff’s viewpoint that Defendants find  
17   “dangerous.” Such actions are clearly repugnant to the Constitution, and Plaintiff has been  
18   irreparably harmed by such conduct. Plaintiff has demonstrated every element necessary for  
19   entitlement to the relief requested.

20 For all of the foregoing reasons, as well as those stated in Plaintiff's other papers herein,  
21 Plaintiff is entitled to a Preliminary Injunction which returns the parties to the *status quo ante litem*  
22 until this Court fully adjudicates all of the issues herein.

23 DATED: May 1, 2008

/s/ L. Robert Fuselier  
Lowell Robert Fuselier, Esq.  
David T. Hayek, Esq.  
Kaloogian & Fuselier, LLP  
Attorneys for Plaintiff

# **EXHIBIT 1**

**CERTIFIED COPY**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

SAN DIEGO MINUTE MEN, )  
                          )  
                          )  
PLAINTIFF,            )  
                          )  
                          )  
VS.                    ) CASE NO. 08CV0210 WQH  
                          )                           (RBB)  
DALE BONNER IN HIS OFFICIAL )  
CAPACITY AS AGENCY DIRECTOR, )  
BUSINESS, TRANSPORTATION AND )  
HOUSING AGENCY; WILL KEMPTON )  
IN HIS OFFICIAL CAPACITY AS )  
CALTRANS DIRECTOR; PEDRO )  
ORSO-DELGADO IN HIS OFFICIAL )  
CAPACITY AS CALTRANS DISTRICT )  
DIRECTOR AND DOES 1 THROUGH )  
50,                    )  
                          )  
                          )  
DEFENDANTS.            )  
                          )  
\_\_\_\_\_

DEPOSITION OF PEDRO ORSO-DELGADO  
SAN DIEGO, CALIFORNIA  
APRIL 8, 2008

REPORTED BY: TRACI ANN TAYLOR, CSR NO. 10413  
VAN DEUSEN REPORTING  
(619) 287-0070 - FAX 287-3010

EXHIBIT 1

1 HAVE SOME INFORMATION, THAT WOULD BE A PURE GUESS. YOU  
2 SHOULD NOT GUESS.

3 DO YOU UNDERSTAND THE DIFFERENCE?

4 A YES.

5 Q I THINK THAT'S GOING TO COVER MOST OF THE  
6 GROUND WORK FOR US.

7 IS THERE ANY REASON WE SHOULDN'T PROCEED WITH  
8 YOUR DEPOSITION TODAY? DO YOU FEEL BAD? YOU ON  
9 MEDICATION? ANYTHING LIKE THAT?

10 A NO, NOT AT ALL.

11 Q THE CONTROVERSY THAT'S BEFORE US HAS TO DO  
12 WITH THE REMOVAL OF THE MINUTEMEN ADOPT-A-HIGHWAY SIGN.

13 YOU'RE FAMILIAR WITH THAT, RIGHT?

14 A CORRECT.

15 Q DID YOU MAKE ANY DECISIONS CONCERNING THE  
16 REMOVAL OF THE SIGN?

17 A THE RELOCATION. NOT REMOVAL.

18 Q IS THE SIGN UP NOW?

19 A NO.

20 Q IS IT DOWN?

21 A YES.

22 Q HAS IT BEEN RELOCATED?

23 A NO.

24 Q DID YOU MAKE ANY DECISIONS WITH REGARD TO THE  
25 REMOVAL OF THE SIGN?

1 ISSUE, FROM MY PERSPECTIVE, THAT WE HAD THE PROSPECTS  
2 OF A CONFRONTATION THAT MIGHT OCCUR AT THAT LOCATION  
3 BETWEEN THE FOLKS THAT WOULD ACTUALLY BE OUT THERE  
4 CLEANING UP THE HIGHWAY UNDER THE PERMIT AND OTHER  
5 INDIVIDUALS WHO MIGHT DISAGREE WITH THEM, THAT THERE  
6 COULD BE POTENTIALLY A PROBLEM WITH PEOPLE TRAVELING BY  
7 THE SITE, THROWING OBJECTS AT THE FOLKS ACTUALLY DOING  
8 THE LITTER PICKUP, OR SOMEONE JUST STOPPING ALONG THE  
9 ROADWAY, WHICH IS A DANGEROUS SITUATION IN AND OF  
10 ITSELF, TO CUT DOWN A SIGN THAT HAD THE MINUTEMEN  
11 ADOPTION LISTED ON IT.

12 Q AND WHY DID YOU THINK THAT ANY OF THOSE  
13 EVENTS MIGHT OCCUR?

14 A WELL, I THINK THAT THE ISSUE OF IMMIGRATION  
15 IS CERTAINLY, BY MOST REASONED CONSIDERATIONS, AN ISSUE  
16 OF SOME CONTROVERSY IN THIS COUNTRY. AND YOU -- WHEN  
17 YOU HAVE ONE COMMUNITY THAT BECOMES PITTED AGAINST  
18 ANOTHER COMMUNITY, WHATEVER THE REASON, CERTAINLY  
19 CONFRONTATIONS FROM TIME TO TIME DO OCCUR.

20 AND THIS ISSUE OF THE MINUTEMEN'S CONCERN  
21 ABOUT IMMIGRATION AND THE FACT THAT THERE WOULD BE  
22 SIGNIFICANT TRAFFIC ALONG THAT CORRIDOR, INCLUDING  
23 IMMIGRANT TRAFFIC, THAT THERE WAS A RISK OF THAT KIND  
24 OF CONFRONTATION OCCURRING.

25 Q WAS THIS A SUBJECTIVE CONCLUSION THAT YOU

1 CAME TO ON YOUR OWN?

2 A I WOULD SAY, YES, IT WAS A SUBJECTIVE  
3 CONCLUSION. AND I DID COME TO THAT CONCLUSION ON MY  
4 OWN.

5 Q OKAY. WAS IT YOUR DECISION TO MOVE THE  
6 SIGN?

7 A YES.

8 Q WHAT CRITERIA DID YOU USE TO SELECT THE NEW  
9 LOCATION?

10 MR. MUELLER: ASSUMES FACTS NOT IN  
11 EVIDENCE.

12 THE WITNESS: PARDON ME?

13 MR. MUELLER: ASSUMES FACTS NOT IN EVIDENCE.  
14 LACK OF FOUNDATION.

15 BY MR. FUSELIER:

16 Q THIS IS ONE OF THOSE MOMENTS WHERE YOU ANSWER  
17 ANYWAY.

18 A SO I HAVE TO GO AHEAD AND ANSWER ANYWAY?

19 I DID NOT PERSONALLY USE ANY CRITERIA. IT  
20 JUST SEEMED THAT WE NEEDED TO RELOCATE THAT SIGN TO A  
21 LOCATION THAT WAS LESS SIGNIFICANT WITH RESPECT TO AN  
22 IMMIGRATION FACILITY IN CLOSE PROXIMITY TO AN AREA OF  
23 HIGHWAY ADOPTED BY THE MINUTEMEN GROUP.

24 Q GOING BACK TO YOUR CONCERNs -- YOUR SAFETY  
25 CONCERNs. WAS IT YOUR THOUGHT THAT THE NAME, SAN DIEGO

1 Q OKAY.

2 A -- I WOULD SAY.

3 Q NOW, WHO ELSE WAS PART OF THAT DECISION  
4 BESIDES YOU?

5 A NO ONE, I BELIEVE. I CONSULTED WITH MR. BILL  
6 VALLE, WHO'S MY CHIEF DEPUTY OF MAINTENANCE AND  
7 OPERATIONS. AND I ASKED HIM TO LOOK AT, YOU KNOW,  
8 OTHER SEGMENTS WITH SIMILAR SITUATIONS SO THAT WE CAN  
9 START PULLING THOSE ALSO. SO IT IS NOT JUST THIS  
10 SEGMENT THAT WE'RE FOCUSING ON.

11 Q SO IT IS JUST YOU THAT MADE THE DECISION; IS  
12 THAT FAIR?

13 A YES.

14 Q DID YOU CONDUCT ANY STUDIES OTHER THAN TO  
15 JUST TALK WITH PEOPLE? DID YOU CONDUCT ANY STUDIES  
16 ABOUT THAT SEGMENT OF THE HIGHWAY THAT LED YOU TO THE  
17 CONCLUSION THAT IT WAS UNSAFE TO HAVE THE MINUTEMEN  
18 SIGN THERE? :

19 A NO..

20 Q WHAT ABOUT THE OTHER SIDE OF THE INTERSTATE  
21 ACROSS THE -- LET'S SEE. THAT WOULD BE THE SOUTHBOUND  
22 SIDE.

23 A YES, SIR.

24 Q ARE YOU GOING TO REMOVE THAT FROM THE SYSTEM  
25 AS WELL?

1 A WHEN THE SEGMENT LAPSSES, YES, WE WILL.

2 Q WELL, IF IT IS UNSAFE, WHY ARE YOU WAITING  
3 FOR THE SEGMENT TO LAPSE?

4 A IT HASN'T CREATED THE CONTROVERSY THAT THIS  
5 ONE DID.

6 Q OKAY. SO WE'RE BACK TO THE SIGN -- THE  
7 MESSAGE OF THE SIGN CREATING A CONTROVERSY?

8 A UH-HUH.

9 Q "YES"?

10 A YES.

11 Q NOW, YOU MADE A STATEMENT EARLIER IN YOUR  
12 TESTIMONY THAT YOU HAVE NEVER HAD AN ISSUE WHERE A SIGN  
13 CREATED A CONTROVERSY.

14 A THAT IS CORRECT.

15 Q WHAT ABOUT THE PLANNED PARENTHOOD SIGN, HAS  
16 THAT EVER CAUSED A CONTROVERSY?

17 A I HAVE NOT BEEN AWARE OF ANY IN THIS  
18 DISTRICT.

19 Q WELL, THAT MIGHT BE BECAUSE THEY ARE OUT OF  
20 THE DISTRICT.

21 MR. BENOWITZ: I THINK THEY ARE IN ORANGE  
22 COUNTY, COUNSEL.

23 MR. FUSELIER: SORRY.

24 MR. BENOWITZ: I THOUGHT IT WAS ORANGE  
25 COUNTY.

1 LOCATION FOR THE SAN DIEGO MINUTEMEN SIGN?

2 A UH-HUH.

3 Q IS THAT A "YES"?

4 A YES. I'M SORRY.

5 Q AND WHERE WOULD THAT BE?

6 A ON STATE ROUTE 52.

7 Q WHY IS THAT A BETTER LOCATION?

8 A BECAUSE WE DON'T HAVE THE AMOUNT OF TRAFFIC.

9 WE DON'T HAVE A CHP FACILITY NOR A BORDER PATROL  
10 FACILITY.

11 Q WHAT'S THE DIFFERENCE IN THE TRAFFIC BETWEEN  
12 THESE TWO LOCATIONS, THE ONE AT THE ORIGINAL SITE AND  
13 THE ONE AT THE POST-SITE?

14 A ABOUT THREE TO ONE.

15 Q AND IS THE DEMOGRAPHIC MAKEUP OF THE TRAFFIC  
16 OF ANY CONCERN TO YOU?

17 MR. BENOWITZ: OBJECTION. CALLS FOR  
18 SPECULATION. VAGUE AND AMBIGUOUS.

19 A NO.

20 BY MR. FUSELIER:

21 Q I'LL SUGGEST TO YOU THAT MR. KEMPTON WAS  
22 PARTICULARLY CONCERNED ABOUT THE IMMIGRANT TRAFFIC AND  
23 THAT BEING A HIGHER CONCENTRATION AT THE BORDER  
24 CHECKPOINT.

25 DO YOU HAVE ANY OF THOSE CONCERNS?

1 A AT THE ORIGINAL LOCATION, YES.

2 Q WHY IS THAT?

3 A BECAUSE YOU HAVE A LOT OF IMMIGRANTS, EITHER  
4 LEGAL OR ILLEGAL, GOING BY. AND THAT'S PART OF WHAT  
5 THIS SAFETY CONCERN IS STEMMING FROM.

6 Q SO YOU THINK THE IMMIGRATION TRAFFIC WOULD BE  
7 THE TRAFFIC THAT MIGHT REACT TO THE MESSAGE OF THE  
8 MINUTEMEN ON THAT SIGN?

9 A NOT NECESSARILY THAT TRAFFIC ONLY. I MEAN,  
10 THERE IS ALSO GROUPS AND ASSOCIATIONS THAT ARE NOT  
11 IMMIGRANTS, QUOTE, UNQUOTE, THAT COULD CREATE A  
12 PROBLEM. I MEAN, WE RECEIVED A LOT OF COMMUNICATION  
13 FROM VARIOUS GROUPS SAYING, "WHAT ARE YOU GUYS DOING,"  
14 YOU KNOW, WHEN THE SIGN WENT UP, AND WHEN THE SAN DIEGO  
15 MINUTEMEN ACTUALLY WENT AND HAD A PRESS CONFERENCE  
16 ABOUT IT.

17 Q SO THEN THE FACT THAT THERE IS A HIGH  
18 CONCENTRATION OF IMMIGRATION TRAFFIC THERE DOESN'T  
19 FACTOR INTO YOUR DECISION?

20 MR. BENOWITZ: OBJECTION. MISSTATES HIS  
21 TESTIMONY.

22 A NO. I SAID THAT IT DOES.

23 BY MR. FUSELIER:

24 Q OH. IT DOES?

25 A ON I-5 IT DOES. I MEAN, THERE IS A LARGE

1 AMOUNT. AND THAT CREATES PART OF THE SAFETY CONCERN IN  
2 THAT LOCATION.

3 Q BECAUSE OF THEIR POSSIBLE ADVERSE REACTION TO  
4 THE MESSAGE OF THE SIGN?

5 A ABSOLUTELY.

6 Q OKAY. I GOT IT. SOMETIMES I HAVE TO GO A  
7 LITTLE PIECE AT A TIME. PLEASE BE PATIENT WITH ME.  
8 I'LL TRY NOT TO PLOW THE SAME GROUND.

9 A I UNDERSTAND.

10 Q DID YOU CONSULT WITH THE CALIFORNIA HIGHWAY  
11 PATROL ABOUT THIS MATTER?

12 A YES, WE DISCUSSED IT WITH --

13 Q WE'RE BACK TO "WE" AGAIN.

14 A MYSELF. I DISCUSSED IT WITH THE LOCAL  
15 HIGHWAY PATROL CHIEF AND THE ASSISTANT CHIEF.

16 Q WHO ARE THEY?

17 A CHIEF CARTER AND CHIEF LYKINS.

18 Q AND WHAT DID THEY SAY ABOUT THE MATTER?

19 A I DON'T ENTIRELY RECALL EXACTLY. BUT  
20 BASICALLY I SAID, "WE HAVE A SAFETY CONCERN HERE. AND  
21 I THINK" -- I'M TRYING TO REMEMBER WHAT WAS THE TONE OF  
22 THEIR -- THEY SAID, "WELL, WE HAVEN'T SEEN ANY ISSUE  
23 YET IN THIS LOCATION." BUT I THINK THAT THEY BELIEVED  
24 THAT THE POTENTIAL WAS THERE.

25 Q WHY DO YOU THINK THEY BELIEVED THAT?

1 Q THIS IS WHAT WE MARKED AS EXHIBIT 13. THIS  
2 IS AN ADOPT-A-HIGHWAY SIGN THAT'S LOCATED VERY CLOSE TO  
3 THE CHECKPOINT. SEE, THERE IS THE SIGN FOR THE TRUCKS  
4 TO GO HERE?

5 IS THAT SIGN OKAY IN THAT LOCATION, AS FAR AS  
6 YOU'RE CONCERNED?

7 A BASED ON THE DIRECTION THAT I HAVE GIVEN  
8 MR. VALLE, AS SOON AS THAT ADOPTEE EITHER LAPSES OR  
9 TERMINATES IN THIS LOCATION, WE WILL NOT HAVE THIS  
10 LOCATION ONE OF THE ADOPTABLE SEGMENTS AGAIN.

11 Q THAT'S ON HIGHWAY 15?

12 A YES. THE SAME WILL HAPPEN ON INTERSTATE 8,  
13 AND STATE ROUTE 94, AND AT THE CHECKPOINT ON I-5 WHERE  
14 THE ACTUAL BORDER IS, AND ON STATE ROUTE 905.

15 MR. BENOWITZ: OFF THE RECORD.

16 (DISCUSSION OFF THE RECORD.)

17 BY MR. FUSELIER:

18 Q I'VE HANDED YOU AN EXHIBIT THAT WE'RE GOING  
19 TO MARK AS NO. 14. IT IS AN E-MAIL CHAIN.

20 ARE YOU FAMILIAR WITH THIS E-MAIL CHAIN?

21 A YES.

22 Q RIGHT ABOUT THE MIDDLE OF THE PAGE IT SAYS,  
23 "I WILL CALL YOU TUESDAY BECAUSE WE MAY HAVE MOVE  
24 LEVERAGE ON THE MINUTEMEN."

25 DO YOU SEE THAT?

1 Q THAT ISN'T WHAT I ASKED YOU. I ASKED YOU IF  
2 YOU HAD AN OPINION?

3 A I DON'T HAVE AN OPINION PROFESSIONALLY.

4 Q I DIDN'T ASK YOU IF YOU HAD A PROFESSIONAL  
5 OPINION.

6 A I DON'T HAVE AN OPINION.

7 Q SO YOU HAVE NO OPINION ABOUT THE MESSAGE OF  
8 THE SAN DIEGO MINUTEMEN; IS THAT YOUR TESTIMONY?

9 MR. BENOWITZ: OBJECTION. ASKED AND  
10 ANSWERED.

11 A YES.

12 BY MR. FUSELIER:

13 Q HAS ANYBODY DISCUSSED WITH YOU THE ISSUE OF  
14 THE MINUTEMEN'S RIGHT TO FREE SPEECH UNDER THE FIRST  
15 AMENDMENT?

16 MR. BENOWITZ: OTHER THAN COUNSEL?

17 MR. FUSELIER: OTHER THAN COUNSEL.

18 A I BELIEVE MR. SCHWILK. AND THERE IS A WHOLE  
19 BUNCH OF E-MAILS IN THERE.

20 BY MR. FUSELIER:

21 Q BAD QUESTION ON MY PART. LET ME START OVER.

22 HAS ANYONE IN THE DEPARTMENT DISCUSSED WITH  
23 YOU THE MINUTEMEN'S RIGHT TO FREE SPEECH UNDER THE  
24 FIRST AMENDMENT WITH REGARD TO THIS SIGN?

25 A I BELIEVE THAT THE ISSUE CAME UP WITH A

1 DISCUSSION THAT I HAD WITH MR. MIKE MILES AND MR. STEVE  
2 TAWIAGA.

3 Q WHO ARE THEY?

4 A MR. MIKE MILES IS OUR DEPUTY FOR MAINTENANCE  
5 AND OPERATIONS OUT OF SACRAMENTO. AND MR. STEVE  
6 TAWIAGA IS THE CHIEF OF THE MAINTENANCE PROGRAM IN  
7 SACRAMENTO.

8 Q IF YOU CAN SPELL THAT NAME FOR THE COURT  
9 REPORTER, SHE'LL BE APPRECIATIVE.

10 A TAWIAGA?

11 Q YES.

12 A I WILL DO MY BEST. I THINK IT IS  
13 T-A-W-I-A-G-A. AND IF THAT'S NOT CORRECT, WE'LL GET  
14 YOU THE CORRECT SPELLING.

15 Q AND WHAT WAS THAT DISCUSSION? CAN YOU  
16 RECOUNT THAT DISCUSSION FOR US?

17 A BASICALLY, IT WAS AN AFTER THE FACT  
18 DISCUSSION ON WHETHER OR NOT, YOU KNOW, THE SIGN SHOULD  
19 OR SHOULDN'T HAVE GONE UP WHEN THE ORIGINAL REVIEW WAS  
20 DONE. AND IN THEIR OPINION WE HAD NO ABILITY NOT TO  
21 ISSUE THE PERMIT BASED ON FREE SPEECH.

22 Q DID YOU AGREE?

23 MR. BENOWITZ: OBJECTION. LACK OF  
24 FOUNDATION.

25 A I MEAN, I UNDERSTAND THE CONCERN. AND I

1 WOULD SAY, YES.

2 BY MR. FUSELIER:

3 Q YOU DID AGREE?

4 A YES.

5 Q SO I WANT TO GET THE SEQUENCE YOU SAID,

6 AFTER THE THOUGHT WAS THIS AFTER THE DECISION TO TAKE

7 THE SIGN DOWN THAT THIS CONVERSATION HAPPENED OR

8 BEFORE?

9 A NO. THIS WAS -- IT WAS IN BETWEEN THE  
10 PERIOD. ONCE THE PERMIT -- ONCE THE SIGN HAD GONE UP,  
11 AND ALL OF THE CONTROVERSY SURROUNDED, THAT'S WHEN THIS  
12 DISCUSSION OCCURRED.

13 Q OKAY. "THIS DISCUSSION" BEING THE FIRST  
14 AMENDMENT FREE SPEECH RIGHTS OF THE MINUTEMEN?

15 A CORRECT.

16 Q AND THE CONCLUSION WAS THAT INITIALLY THERE  
17 WAS NO BASIS TO DENY THE PERMIT BECAUSE OF THE FIRST  
18 AMENDMENT RIGHTS OF THE MINUTEMEN; IS THAT RIGHT?

19 MR. BENOWITZ: OBJECTION. VAGUE AND  
20 AMBIGUOUS. CALLS FOR A LEGAL CONCLUSION.

21 BUT AS TO YOUR UNDERSTANDING, YOU CAN  
22 ANSWER.

23 BY MR. FUSELIER:

24 Q NO. I MEAN THE CONVERSATION. WAS THAT WHAT  
25 IT WAS ABOUT?

1 THAT.

2 Q SO THE SAFETY ISSUE IS DIMINISHED -- OR THE  
3 SAFETY THREAT IS DIMINISHED IF THERE ARE LESS CARS  
4 GOING BY; IS THAT CORRECT?

5 A AND YOU DON'T HAVE -- YES. AND YOU DON'T  
6 HAVE A BORDER PATROL CHECKPOINT, AND YOU DON'T HAVE A  
7 CHP VEHICLE ENFORCEMENT FACILITY AT THAT LOCATION, AND  
8 THE AMOUNT OF HEAVY TRUCKS AND ALL OF THAT ASSOCIATED.

9 MR. BENOWITZ: COUNSEL, IF I COULD INTERJECT.

10 MR. ORSO-DELGADO, AT THE BREAK, DID WANT TO CLARIFY  
11 SOMETHING EARLIER WITH REGARD TO WHEN THE CONVERSATION  
12 WITH MR. MILES AND MR. TAWIAGA TOOK PLACE.

13 BY MR. FUSELIER:

14 Q WELL, WE HAD THAT AGREEMENT.

15 A AND COUNSEL BELIEVED THAT I HAD STATED OR  
16 THAT IT WAS MISUNDERSTOOD THAT IT WAS PRIOR TO THE  
17 ERECTION OF THE SIGN. IT WAS NOT. IT WAS AFTER.

18 Q RIGHT. I UNDERSTOOD. LET ME JUST TELL YOU.

19 HERE'S WHAT MY UNDERSTANDING OF YOUR TESTIMONY WAS,  
20 THAT THE CONVERSATION WITH MR. MILES AND MR. TAWIAGA --

21 A TAWIAGA.

22 Q YES. TAWIAGA OCCURRED AFTER THE SIGN WAS  
23 ERECTED AND BEFORE THE CONTROVERSY REALLY GOT UNDERWAY  
24 WITH PEOPLE COMPLAINING?

25 A CORRECT.

1 Q IT OCCURRED IN THAT TIME FRAME WHICH --

2 A CORRECT.

3 Q -- I'M GOING TO ASSUME IS THE END OF

4 DECEMBER, FIRST PART OF JANUARY, CORRECT?

5 A YES, SIR.

6 Q AND IT WAS THE RESULT OF PEOPLE INTERNALLY IN  
7 THE DEPARTMENT RAISING CONCERN

8 A CORRECT.

9 Q THAT'S THE WAY I UNDERSTOOD IT.

10 A FAIR ENOUGH.

11 Q AND IF IT TURNS OUT THAT THE LOCATION IS --  
12 THE NEW LOCATION IS PROBLEMATIC, THEN WE'LL LOOK FOR  
13 ANOTHER LOCATION WHICH IS A LITTLE MORE REMOTE, IS THAT  
14 FAIR?

15 A OR -- I WOULDN'T SAY MORE REMOTE, BUT A  
16 LOCATION THAT HAS LESS OF A POTENTIAL FOR THIS ISSUE TO  
17 HAPPEN. AND LIKE I STATED BEFORE, I DON'T KNOW THAT WE  
18 WOULD BE SUCCESSFUL ONE WAY OR ANOTHER. AT THIS POINT  
19 IN TIME, YOU KNOW, OUR BEST INTENTION IS THAT THIS  
20 LOCATION WOULD BE MORE SUITABLE.

21 Q AND I USED THE TERM REMOTE. PERHAPS THAT'S  
22 NOT A GOOD TERM. LET ME USE A DIFFERENT TERM. YOU  
23 WOULD FIND ANOTHER LOCATION WHERE THERE IS LESS  
24 TRAFFIC?

25 A YEAH. ONE COULD SAY THAT. YES.

1 Q I'M TRYING TO GET THE CRITERIA.

2 A YES.

3 Q WE HAVE A PILE OF COMMUNICATIONS WHICH  
4 HAVEN'T BEEN MARKED. AND THESE ARE REALLY E-MAILS AND  
5 LETTERS BACK AND FORTH THAT YOU PROVIDED. AND I HAVE  
6 SOME PARTICULAR ONES I WANT TO DISCUSS. BUT I'M GOING  
7 TO MARK THIS GROUP COLLECTIVELY AS NEXT IN ORDER, WHICH  
8 IS 15.

9 IN THIS GROUP OF DOCUMENTS THERE ARE A COUPLE  
10 OF THEM THAT I'D JUST KIND OF LIKE TO WORK WITH YOU A  
11 LITTLE BIT ON. WHY DON'T YOU REVIEW -- WELL, THIS IS A  
12 COMMUNICATION BETWEEN STEVE SAVILLE -- AND IT LOOKS TO  
13 ME LIKE IT IS COMING FROM SERGIO --

14 "I SPOKE WITH WILL LAST NIGHT REGARDING THE  
15 SIGN ISSUE. WE'VE RECEIVED WORD THAT THE MEMBERSHIPS  
16 OF THE ASIAN, BLACK, AND LATINO CAUCUSES IN THE STATE  
17 ASSEMBLY ARE EXTREMELY UPSET ABOUT THE MINUTEMEN ISSUE  
18 AND ARE PLANNING TO TAKE US ON."

19 ARE YOU FAMILIAR WITH THIS?

20 A I REMEMBER THE E-MAIL.

21 (PLAINTIFF'S EXHIBIT 15 MARKED.)

22 BY MR. FUSELIER:

23 Q "WILL ASKED THE FOLLOWING: IS LEGAL  
24 REVIEWING THE WEBSITE LITERATURE, PUBLICATIONS OF THE  
25 ORGANIZATIONS IN DETAIL TO DETERMINE WHETHER THEY HAVE

1 EXPRESSED ANY SORT OF DISCRIMINATION?" AND QUESTION 2,  
2 "IS TRAFFIC OPS REVIEWING THE PROPOSED LOCATION TO  
3 DETERMINE WHETHER A SAFETY ISSUE EXISTS OR COULD EXIST  
4 RELATED TO THEIR ACTIVITY?"

5 THE RESPONSE IS: "THE RE-~~MADE~~ BELOW IS FROM  
6 ~~LEGAL AFFAIRS~~, DIRECTOR RICHARD HARMON."

7 MR. BENOWITZ: LEGISLATIVE AFFAIRS.

8 THE WITNESS: LEGISLATIVE AFFAIRS.

9 BY MR. FUSELIER:

10 Q "LEG AFFAIRS"?

11 A YEAH.

12 Q "I WILL NEED YOU TO TAKE A LOOK AT HIS FIRST  
13 QUESTION. THE SECOND IS EASY TO ANSWER SINCE THIS  
14 PORTION OF THE HIGHWAY HAS BEEN ADOPTABLE FOR YEARS AND  
15 HAS A CLEAN STATE WITH PAST VOLUNTEERS."

16 THE SECOND QUESTION WAS: "IS THERE A SAFETY  
17 ISSUE?" IT APPEARS THAT THE CONCLUSION WAS THERE WAS  
18 NO SAFETY ISSUE.

19 DO YOU DISAGREE WITH THAT CONCLUSION?

20 A NO AT THE TIME. AND I MEAN, YOU HAVE --  
21 AND WE HAVE STATED -- I HAVE STATED THAT, YOU KNOW, WE  
22 HAD PRIOR GROUPS THAT HAVE ADOPTED THIS SEGMENT AND  
23 THAT WE HADN'T HAD ANY PROBLEMS. IT IS THIS SPECIFIC  
24 SIGN AND THIS SPECIFIC ISSUE THAT CREATES THE SAFETY  
25 CONCERN.

Enrique Morones <enriquemorones@cox.net> wrote:

From: "Enrique Morones" <enriquemorones@cox.net>  
To: "Enrique Morones" <enriquemorones@cox.net>  
Subject: PLEASE SEND you own EMAILs TO CALTRANS !!!  
Date: Fri, 18 Jan 2008 18:55:43 -0800

Mr Pedro Orso-Delgado  
Director CALTRANS  
San Diego, CA

Dear Pedro,

[ As we discussed earlier this week. WE DO NOT WANT SIGNS MOVED TO ANOTHER PART OF FREEWAY AS STATED TODAY BY A HANDFUL OF PEOPLEWE DEMAND MINUTEMEN SIGNS BE REMOVED, PERIOD! ]

[ GENTE UNIDA (65 Human Rights Organizations) which originally protested minutemen signage action one week ago today, once again states, WE DO NOT ACCEPT THE SAN DIEGO MINUTEMAN SIGNAGE ANY WHERE. (Along the adopt a freeway program or elsewhere). We clearly stated this point originally and stand firm on this position. ]

As I stated to you earlier this week that this is not only a freedom of speech issueit is a security issue. Having this signage any where on California's freeways and highways is a major distraction and could attract disruptive actions along those roadways that could be a major safety concern.

There is also the issue of CALTRANS policy to not allow groups that □practice discrimination□ to have signage on ADOPT A FREEWAY program. Today, GENTE UNIDA distributed a document from another of the several coalitions working with us on this issue BORDER HUMAN RIGHTS COALITION, entitled □CREATING THE MINUTEMEN, a small extremist fueled by misinformation□ (by Texas ACLU project) Minutemen are racist hate groups, period.

In the spirit of this weekend and as one on my personal hero□s Rev Martin Luther King Jr. stated □Injustice here, is injustice everywhere□ A minuteman sign here, or anywhere, is injustice everywhere. Minutemen promote hate, and they, nor there signs, will be tolerated.

Pedro please remove sign.

Paz y mas

Enrique Morones  
**Border Angels/Gente Unida**  
P.O. Box 86598,  
San Diego, CA 92138  
[www.borderangels.org](http://www.borderangels.org)  
(619) 269-7865

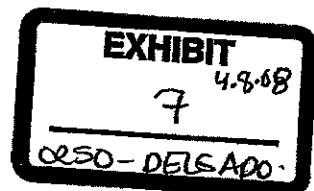
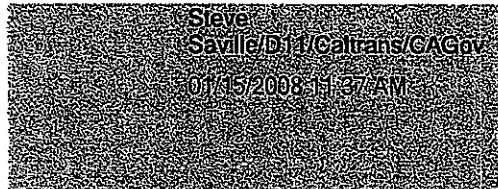
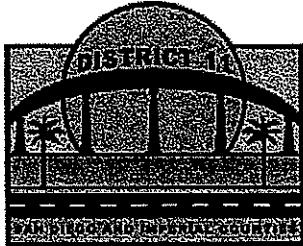


EXHIBIT 1



To Jeffrey R Benowitz/D11/Caltrans/CAGov@DOT, Glenn B Mueller/D11/Caltrans/CAGov@DOT  
cc Pedro.Orso-Delgado@dot.ca.gov  
bcc  
Subject Fw: Adopt-a-Highway

The e-mail below is from Leg Affairs Director Richard Harmon. I will need you to take a look at his first question. The second is easy to answer since this portion of freeway has been "adoptable" for years and has a clean slate with past volunteers.



STEVE SAVILLE  
DIRECTOR, PUBLIC INFORMATION/LEGISLATIVE AFFAIRS  
4050 TAYLOR ST., SAN DIEGO, CA 92110  
BUILDING ONE, SECOND FLOOR, ROOM 228  
(619) 688-6678

— Forwarded by Steve Saville/D11/Caltrans/CAGov on 01/15/2008 11:34 AM —

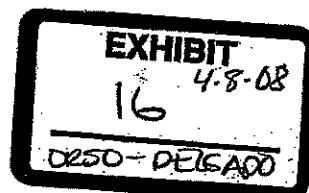
Richard  
Harmon/HQ/Caltrans/CAGov  
01/15/2008 10:07 AM

To Steve Saville/D11/Caltrans/CAGov@DOT  
cc Tamie McGowen/HQ/Caltrans/CAGov@DOT  
Subject Adopt-a-Highway

I spoke with Will last night regarding this sign issue. We've received word that the memberships of the Asian, Black and Latino Caucuses in the State Assembly are extremely upset about the Minutemen issue and are planning to "take us on."

Will asked the following:

- Is Legal reviewing the Web site, literature, publications of the organizations in detail to determine whether they have expressed any sort of discrimination?
- Is Traffic Ops reviewing the proposed location to determine whether a safety issue exists (or could exist) related to their activity?



# **EXHIBIT 2**

**CERTIFIED COPY**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

SAN DIEGO MINUTE MEN, )  
                          )  
                          )  
PLAINTIFF,            )  
                          )  
VS.                    )    CASE NO. 08CV0210 WQH  
                          )                                   (RBB)  
DALE BONNER IN HIS OFFICIAL    )  
CAPACITY AS AGENCY DIRECTOR,    )  
BUSINESS, TRANSPORTATION AND    )  
HOUSING AGENCY; WILL KEMPTON    )  
IN HIS OFFICIAL CAPACITY AS    )  
CALTRANS DIRECTOR; PEDRO        )  
ORSO-DELGADO IN HIS OFFICIAL    )  
CAPACITY AS CALTRANS DISTRICT    )  
DIRECTOR AND DOES 1 THROUGH    )  
50,                    )  
                          DEFENDANTS.    )  
                          )  
\_\_\_\_\_  
)

DEPOSITION OF WILLIAM ALAN KEMPTON  
SAN DIEGO, CALIFORNIA

MARCH 20, 2008

REPORTED BY: TRACI A. TAYLOR, CSR NO. 10413

VAN DEUSEN REPORTING  
(619) 287-0070 - FAX 287-3010

EXHIBIT 2

20

1 ISSUE, FROM MY PERSPECTIVE, THAT WE HAD THE PROSPECTS  
2 OF A CONFRONTATION THAT MIGHT OCCUR AT THAT LOCATION  
3 BETWEEN THE FOLKS THAT WOULD ACTUALLY BE OUT THERE  
4 CLEANING UP THE HIGHWAY UNDER THE PERMIT AND OTHER  
5 INDIVIDUALS WHO MIGHT DISAGREE WITH THEM, THAT THERE  
6 COULD BE POTENTIALLY A PROBLEM WITH PEOPLE TRAVELING BY  
7 THE SITE, THROWING OBJECTS AT THE FOLKS ACTUALLY DOING  
8 THE LITTER PICKUP, OR SOMEONE JUST STOPPING ALONG THE  
9 ROADWAY, WHICH IS A DANGEROUS SITUATION IN AND OF  
10 ITSELF, TO CUT DOWN A SIGN THAT HAD THE MINUTEMEN  
11 ADOPTION LISTED ON IT.

12 Q AND WHY DID YOU THINK THAT ANY OF THOSE  
13 EVENTS MIGHT OCCUR?

14 A WELL, I THINK THAT THE ISSUE OF IMMIGRATION  
15 IS CERTAINLY, BY MOST REASONED CONSIDERATIONS, AN ISSUE  
16 OF SOME CONTROVERSY IN THIS COUNTRY. AND YOU -- WHEN  
17 YOU HAVE ONE COMMUNITY THAT BECOMES PITTED AGAINST  
18 ANOTHER COMMUNITY, WHATEVER THE REASON, CERTAINLY  
19 CONFRONTATIONS FROM TIME TO TIME DO OCCUR.

20 AND THIS ISSUE OF THE MINUTEMEN'S CONCERN  
21 ABOUT IMMIGRATION AND THE FACT THAT THERE WOULD BE  
22 SIGNIFICANT TRAFFIC ALONG THAT CORRIDOR, INCLUDING  
23 IMMIGRANT TRAFFIC, THAT THERE WAS A RISK OF THAT KIND  
24 OF CONFRONTATION OCCURRING.

25 Q WAS THIS A SUBJECTIVE CONCLUSION THAT YOU

1 CAME TO ON YOUR OWN?

2 A I WOULD SAY, YES, IT WAS A SUBJECTIVE  
3 CONCLUSION. AND I DID COME TO THAT CONCLUSION ON MY  
4 OWN.

5 Q OKAY. WAS IT YOUR DECISION TO MOVE THE  
6 SIGN?

7 A YES.

8 Q WHAT CRITERIA DID YOU USE TO SELECT THE NEW  
9 LOCATION?

10 MR. MUELLER: ASSUMES FACTS NOT IN  
11 EVIDENCE.

12 THE WITNESS: PARDON ME?

13 MR. MUELLER: ASSUMES FACTS NOT IN EVIDENCE.  
14 LACK OF FOUNDATION.

15 BY MR. FUSELIER:

16 Q THIS IS ONE OF THOSE MOMENTS WHERE YOU ANSWER  
17 ANYWAY.

18 A SO I HAVE TO GO AHEAD AND ANSWER ANYWAY?  
19 I DID NOT PERSONALLY USE ANY CRITERIA. IT  
20 JUST SEEMED THAT WE NEEDED TO RELOCATE THAT SIGN TO A  
21 LOCATION THAT WAS LESS SIGNIFICANT WITH RESPECT TO AN  
22 IMMIGRATION FACILITY IN CLOSE PROXIMITY TO AN AREA OF  
23 HIGHWAY ADOPTED BY THE MINUTEMEN GROUP.

24 Q GOING BACK TO YOUR CONCERNs -- YOUR SAFETY  
25 CONCERNs. WAS IT YOUR THOUGHT THAT THE NAME, SAN DIEGO

1 A IN THAT INSTANCE.

2 MR. MUELLER: OBJECTION. VAGUE. AND  
3 INCOMPLETE HYPOTHETICAL.

4 A IN THAT INSTANCE, I WOULD AGREE.

5 BY MR. FUSELIER:

6 Q AND WHEN WE TALK ABOUT THE CIRCUMSTANCES THAT  
7 HAVE BEEN SHARED WITH YOU TO SUPPORT THE ALLEGATION  
8 ABOUT THE MINUTEMEN AS AN ORGANIZATION, IT HAS TO DO  
9 WITH INDIVIDUALS AND THEIR BEHAVIOR MORE THAN WITH A  
10 PUBLIC STATEMENT ABOUT PHILOSOPHY BY THE GROUP; IS THAT  
11 FAIR?

12 A I DON'T THINK I WILL COMMENT ON THAT. I  
13 THINK THAT IT CERTAINLY -- THE ALLEGATIONS CERTAINLY  
14 REFER TO THE ACTIONS OF A FEW INDIVIDUALS. WHETHER OR  
15 NOT IT WAS REPRESENTATIVE OF THE ORGANIZATION'S  
16 PHILOSOPHY, I WOULDN'T COMMENT ON THAT.

17 Q DO YOU KNOW WHAT THE ORGANIZATION'S  
18 PHILOSOPHY IS?

19 A WE DID IN FACT GO THROUGH INFORMATION  
20 RELATIVE TO THE ORGANIZATION, AND I SAW NOTHING IN THE  
21 PHILOSOPHY, THE PHILOSOPHICAL STATEMENTS OF ANYTHING  
22 THAT I LOOKED AT THAT WOULD HAVE ADVOCATED THAT  
23 BEHAVIOR.

24 Q SEE ANYTHING THAT ADVOCATED RACISM?

25 A NO.

1 Q ANYTHING THAT ADVOCATED HATRED?

2 A NO.

3 Q AND JUST TO CLOSE THE DOOR, ANYTHING THAT  
4 ADVOCATED VIOLENT BEHAVIOR?

5 A NO.

6 Q WOULD IT BE FAIR TO SAY THAT THE PURPOSE OF  
7 THE LATINO CAUCUS'S MEETING WITH YOU WAS TO EXPRESS  
8 THEIR CONCERN THAT THE NAME, THE SAN DIEGO MINUTEMEN,  
9 BEING POSTED ON THE SIDE OF THE HIGHWAY WAS CONVEYING A  
10 MESSAGE THAT THEY THOUGHT MIGHT OFFEND PEOPLE?

11 A I CAN'T SPECULATE ON WHAT THEIR PURPOSE WAS.  
12 MY OBSERVATION WOULD BE, AFTER GOING TO THE MEETING,  
13 THAT THAT WAS CERTAINLY ONE OF THE MESSAGES THAT THEY  
14 WANTED TO COMMUNICATE TO ME.

15 Q AND THEY DID COMMUNICATE IT TO YOU?

16 A YES.

17 Q DID THEY COMMUNICATE ANY OTHER MESSAGE TO  
18 YOU?

19 A THE ISSUE OF A PATTERN OF VIOLENT BEHAVIOR,  
20 AND A REQUEST THAT WE LOOK INTO THOSE ALLEGATIONS.

21 Q DID THEY ASK YOU TO MOVE THE SIGN OR TO TAKE  
22 THE SIGN DOWN? THAT'S COMPOUND. EXCUSE ME.

23 DID THEY ASK YOU TO TAKE THE SIGN DOWN?

24 A THEIR POSITION WAS TO REMOVE THE SIGN AND TO  
25 NOT RELOCATE IT.

1 Q NOW, THERE WAS A SUBSEQUENT DECISION THAT WAS  
2 MADE TO REMOVE -- LET ME RESAY THAT THERE WAS A  
3 DECISION MADE TO REMOVE THAT SECTION OF THE ROADWAY,  
4 THAT WOULD BE THE NORTHBOUND SECTION AT THE IMMIGRATION  
5 CHECKPOINT, FROM THE ADOPT-A-HIGHWAY PROGRAM,  
6 CORRECT?

7 A YOU KNOW, I'M NOT CERTAIN THAT THAT DECISION  
8 HAS BEEN MADE. IT WAS DISCUSSED, BUT I AM NOT AWARE  
9 THAT WE HAVE REMOVED THAT SEGMENT FROM THE  
10 ADOPT-A-HIGHWAY PROGRAM.

11 Q IS IT YOUR INTENTION TO DO THAT?

12 A IT IS NOT MY INTENTION TO DO THAT. IT WAS  
13 DISCUSSED AS POTENTIALLY NOT THE BEST PLACE, FOR OTHER  
14 REASONS, PROXIMITY TO SAN ONOFRE, THE BORDER INSPECTION  
15 FACILITY WHICH OCCUPIES A PORTION OF IT, THAT MAYBE  
16 THAT WAS A BETTER PLACE FOR CALTRANS FORCES TO DO THE  
17 MAINTENANCE WORK THAN TO USE IT AS AN ADOPT-A-HIGHWAY  
18 PROGRAM.

19 SO THAT -- I SUSPECT IT IS FAIR TO SAY, IT  
20 STILL MAY BE UNDER CONSIDERATION. I AM NOT AWARE OF A  
21 DECISION BEING MADE ON THAT POINT.

22 Q SO, THEN, AS WE SIT HERE TODAY, THAT PART OF  
23 THE HIGHWAY IS AVAILABLE FOR ANOTHER APPLICANT TO  
24 REQUEST A PERMIT, ENCROACHMENT PERMIT TO ADOPT THAT  
25 PART OF THE ROAD, AS WE SIT HERE NOW, CORRECT?

1 MR. MUELLER: CALLS FOR SPECULATION.

2 A ~~IF IT HASN'T BEEN REMOVED FROM THE~~  
3 ~~ADOPT-A-HIGHWAY ELIGIBLE SEGMENTS OF HIGHWAY, THEN IT~~  
4 ~~WOULD STILL BE AVAILABLE.~~

5 BY MR. FUSELIER:

6 Q ~~WOULD YOU KNOW IF IT HAS BEEN REMOVED? IS~~  
7 ~~THAT SOMETHING THAT WOULD BE PASSED BY YOU, CONSIDERING~~  
8 ~~THIS LITIGATION AND ALL THE THINGS THAT ARE GOING ON?~~

9 A ~~YES, I WOULD EXPECT TO KNOW. AND THE FACT~~  
10 ~~THAT I DON'T KNOW IS AN INDICATION TO ME THAT IT HAS~~  
11 ~~NOT BEEN REMOVED.~~

12 Q DO YOU KNOW OF ANY -- LET ME ASK THIS  
13 QUESTION. IF IT WERE TO BE REMOVED, HOW WOULD THAT  
14 PROCESS BE UNDERTAKEN? WHAT'S THE PROCEDURE FOR  
15 THAT?

16 A IT WOULD SIMPLY BE DEEMED AN INELIGIBLE  
17 ADOPT-A-HIGHWAY LOCATION.

18 Q AND IS THAT WITHIN YOUR PURVIEW TO MAKE THAT  
19 DETERMINATION?

20 A YES.

21 Q ANYBODY ELSE'S PURVIEW?

22 A I WOULD TRUST A DISTRICT DIRECTOR, SUCH AS  
23 MR. PEDRO ORSO-DELGADO, TO MAKE THAT JUDGMENT. I WOULD  
24 TRUST LITERALLY OUR DEPUTY FOR MAINTENANCE AND  
25 OPERATIONS TO MAKE THAT JUDGMENT.

1 Q DID YOU MAKE ANY ATTEMPT TO CONTACT ANYONE IN  
2 THE ORGANIZATION, LIKE THE MAN THAT IS LISTED ON THE  
3 PERMIT?

4 A NO.

5 Q DO YOU KNOW -- OKAY.

6 IF THE PERMIT IS SITE SPECIFIC AND TIME  
7 SPECIFIC, HOW -- WHAT ADMINISTRATIVE PROCEDURES ARE  
8 USED TO CHANGE THE LOCATION ON THIS PERMIT THAT'S  
9 ALREADY ISSUED WITHOUT REVOKING IT?

10 A MAYBE I CAN BEST ANSWER THAT QUESTION BY  
11 GIVING YOU AN EXAMPLE. MOST OF THE TIME PERMITS OF  
12 THIS NATURE ARE REVOKED FOR REASONS OF NONPERFORMANCE.  
13 THERE IS A REQUIREMENT THAT THE GROUP EITHER HIRE  
14 SOMEONE TO COME IN AND CLEAN THE ROADWAY OR PERFORM  
15 THAT SERVICE THEMSELVES AFTER RECEIVING TRAINING. I  
16 BELIEVE THE FREQUENCY IS TWICE A MONTH.

17 AND IF AN AGENCY OR AN ORGANIZATION THAT HAS  
18 BEEN GRANTED A PERMIT DOES NOT FULFILL THAT  
19 RESPONSIBILITY, THEN WE WILL REVOKE THE PERMIT.

20 Q ~~OKAY. BUT IN THIS CASE YOU DIDN'T REVOKE THE~~  
21 ~~PERMIT. DID YOU? OR DID YOU REVOKE IT? I DON'T KNOW.~~

22 A ~~TECHNICALLY, THAT EXISTING PERMIT WAS~~  
23 ~~REVOKED.~~

24 Q ~~OKAY.~~

25 A ~~BECAUSE WE FOUND ANOTHER LOCATION AT WHICH A~~

1 NEW PERMIT WOULD HAVE BEEN ISSUED HAD THE ORGANIZATION  
2 BEEN WILLING TO ACCEPT THAT.

3 Q ALL RIGHT. NOW I UNDERSTAND. BECAUSE I WAS  
4 A BIT CONFUSED ABOUT THAT. TECHNICALLY, THE PERMIT HAS  
5 BEEN REVOKED, IS THAT FAIR?

6 A THAT SPECIFIC PERMIT WHICH IS A CONTRACT FOR  
7 THAT LOCATION HAS BEEN REVOKED.

8 Q OKAY.

9 A WITHOUT PREJUDICE OF THAT WORD. AND ANOTHER  
10 LOCATION ALONG THE STATE HIGHWAY SYSTEM HAS BEEN  
11 IDENTIFIED FOR PLACEMENT OF A SIGN AND FOR ASSUMPTION  
12 OF THE RESPONSIBILITIES UNDER THE ADOPT-A-HIGHWAY  
13 PROGRAM.

14 Q AND A NEW PERMIT WILL BE ISSUED FOR THAT SITE  
15 SPECIFIC, CORRECT?

16 A EXACTLY.

17 Q YOU ARE NOT TAKING THE POSITION -- YOU HAVE  
18 NOT TAKEN THE POSITION THAT AN ADOPT-A-HIGHWAY SIGN IN  
19 ITS GENERIC SENSE IS AN ISSUE NEAR THE CHECKPOINT; IS  
20 THAT FAIR?

21 A I PERSONALLY HAVE NOT COME TO THAT  
22 CONCLUSION. ALTHOUGH, AS WE DISCUSSED PREVIOUSLY,  
23 THERE HAS BEEN SOME DISCUSSION THAT THIS LOCATION, FOR  
24 OTHER REASONS, NOT RELATED TO THE CASE AT HAND, MAY NOT  
25 BE A SUITABLE LOCATION FOR AN ADOPT-A-HIGHWAY

1 A A LETTER WAS SENT WHICH DESCRIBED THE  
2 REASONS.

3 Q "FORWARD A REQUEST FOR THE PERMITS  
4 CANCELLATION TO THE DISTRICT PERMITS BRANCH. THE  
5 REQUEST MUST INCLUDE THE REASON FOR THE REQUEST. AND  
6 COPIES OF ANY WARNING AND/OR CANCELLATION LETTERS MUST  
7 BE ATTACHED."

8 WAS THAT DONE?

9 A I DO NOT KNOW IF THAT OCCURRED.

10 Q FOUR, "SUBMIT A WORK ORDER FOR REMOVAL OF THE  
11 RECOGNITION PANEL." THAT'S THE SIGN?

12 A YES.

13 Q "NOTE, A CONTRACTOR WHOSE PERMIT HAS BEEN  
14 REVOKED" -- WE WON'T GO INTO THAT.

15 HAS THAT BEEN DONE?

16 A I WOULD ASSUME IT HAS BEEN DONE. BUT I DO  
17 NOT KNOW THAT IT WAS DONE.

18 Q HAVE YOU BEEN INFORMED THAT THE SIGN HAS BEEN  
19 REMOVED?

20 A YES.

21 Q SO SOMETHING HAPPENED TO MOVE THE SIGN.

22 ~~ARE YOU AWARE OF ANY OTHER SIGN BEING REMOVED~~  
23 ~~OR RELOCATED BECAUSE OF THE NAME THAT WAS ON THE~~  
24 ~~SIGN?~~

25 A ~~I AM NOT~~

1 Q SO THIS IS A UNIQUE EVENT, FAIR?

2 A FAIR. LET ME AMEND THAT, IF I CAN.

3 Q ABSOLUTELY.

4 A CERTAINLY ON OUR SYSTEM THAT IS THE CASE. I  
5 AM AWARE OF OTHER ACTIONS IN OTHER STATES WHERE SIGNS  
6 WERE REMOVED.

7 Q NO. I WAS PARTICULARLY INTERESTED IN  
8 CALTRANS.

9 A RIGHT.

10 Q AND THIS IS AN OPPORTUNITY -- ALTHOUGH WE  
11 HAVEN'T HAD THIS ISSUE ARISE, AT ANY TIME THAT YOU NEED  
12 TO CLARIFY SOMETHING OR CHANGE --

13 A DON'T WORRY ABOUT THAT. I'LL CERTAINLY TELL  
14 YOU.

15 Q MAKE YOURSELF COMFORTABLE WITH THAT.

16 DO YOU REMEMBER THE TERM QUID PRO QUO?

17 A YES.

18 Q YOU UNDERSTAND IT IS SOMETHING FOR SOMETHING,  
19 IN EXCHANGE?

20 A THIS FOR THAT.

21 Q THIS FOR THAT. EXACTLY.

22 A FOUR YEARS OF HIGH SCHOOL LATIN.

23 Q WHAT IS THE QUID PRO QUO BETWEEN THE STATE  
24 AND THE ADOPTEE -- OR THE ADOPTER OF THE SIGN FOR THAT  
25 SECTION, AS YOU UNDERSTAND IT?

1 MR. MUELLER: LACK OF FOUNDATION. ASSUMES  
2 FACT NOT IN EVIDENCE. INCOMPLETE HYPOTHETICAL.

3 A THE QUID PRO QUO AT AN ADOPT-A-HIGHWAY  
4 SEGMENT LOCATION?

5 BY MR. FUSELIER:

6 Q YES.

7 A THE QUID PRO QUO IS THAT THE STATE RECEIVES  
8 THE BENEFIT OF ADDITIONAL RESOURCES TO HELP KEEP THE  
9 ROADWAY FREE OF LITTER. THE RETURN TO THE -- IN RETURN  
10 FOR THAT, THE STATE PROVIDES SOME RECOGNITION, VIA A  
11 SIGN, FOR THE GROUP THAT IS EITHER PROVIDING OR PAYING  
12 FOR THAT SERVICE.

13 Q THE ROAD GETS CLEANED UP. THAT'S THE BENEFIT  
14 TO THE STATE. AND WHOEVER IT IS GETS THE PUBLIC  
15 AWARENESS OF WHO THEY ARE; IS THAT FAIR?

16 A YES.

17 Q WOULD IT BE FAIR TO DESCRIBE THAT AS  
18 ADVERTISING FOR THAT NAME?

19 A I WOULD ASSUME THAT SOME FOLKS THAT DO THIS  
20 SERVICE MAY VIEW IT AS AN OPPORTUNITY FOR ADVERTISING  
21 IN TERMS OF MCDONALD'S AND THINGS OF THAT NATURE. FROM  
22 OUR PERSPECTIVE, IT IS A RECOGNITION. IT IS THE FACT  
23 THAT YOU ARE RECOGNIZING THE FACT THAT THIS GROUP OR  
24 THESE INDIVIDUALS OR WHOEVER ARE PROVIDING THAT  
25 SERVICE.

1 Q RIGHT. BUT IT WOULD BE A DIFFICULT FICTION  
2 TO MAINTAIN TO PRESUME THAT THE PEOPLE WHO DO THIS,  
3 LIKE MCDONALD'S, ARE NOT DOING IT FOR THE PURPOSE OF  
4 GETTING THEIR NAME OUT IN FRONT OF THE PUBLIC?

5 A WELL, OF COURSE, I CAN'T SPEAK TO MCDONALD'S.  
6 BUT, YOU KNOW, FROM MY PERSPECTIVE, YES.

7 Q OF COURSE. IS IT CORRECT THAT CALTRANS  
8 INTENDS TO LOCATE A NEW SAN DIEGO MINUTEMEN SIGN ON  
9 HIGHWAY 54 IN SANTEE?

10 A THAT WOULD BE HIGHWAY 52 --

11 Q 52?

12 A -- IN SANTEE.

13 Q IN SANTEE. AND IS THAT A LOCATION THAT WAS  
14 APPLIED FOR BY THE SAN DIEGO MINUTEMEN?

15 A NO.

16 Q WHAT WAS THE BASIS FOR SELECTING THAT  
17 LOCATION FOR A NEW ADOPT-A-HIGHWAY SIGN FOR THE SAN  
18 DIEGO MINUTEMEN?

19 A NO. 1, IT WAS AVAILABLE. NO. 2, IT IS NOT  
20 LOCATED NEAR A FACILITY SUCH AS THE I-5 LOCATION WHICH  
21 PROMPTED MY INITIAL CONCERNS. AND IT IS A SOMEWHAT --  
22 IT'S NOT AN INTERSTATE ROUTE, BUT IT IS A FREEWAY  
23 SEGMENT.

24 Q IN YOUR OPINION, WILL THAT NEW LOCATION HAVE  
25 LESS VISIBILITY THAN THE PREVIOUS LOCATION?

1 THIS NATURE. AND THAT WAS THE REASON.

2 Q ~~NEXT PARAGRAPH. "WE HAVE UP TO 60 DAYS TO~~  
3 ~~FORMALLY DENY AN ENCROACHMENT PERMIT APPLICATION. I AM~~  
4 ~~HOPEFUL THAT BY THAT TIME THE CHP WILL HAVE CONCLUDED~~  
5 ~~THEIR INVESTIGATION AND WE WILL KNOW WHETHER OR NOT THE~~  
6 ~~GROUP MEETS THE CRITERIA TO PARTICIPATE IN THE AAH~~  
7 ~~PROGRAM."~~

8 ~~WHAT CHP INVESTIGATION IS BEING REFERRED~~  
9 ~~TO.~~

10 A ~~WHEN WE RECEIVED THE ASSERTIONS OR~~  
11 ~~ALLEGATIONS FROM THE LATINO CAUCUS, WE -- I HAD~~  
12 ~~CONVERSATIONS WITH COMMISSIONER BROWN -- THEN~~  
13 ~~COMMISSIONER BROWN, ABOUT HOW WE MIGHT -- OTHER THAN~~  
14 ~~THE INFORMATION THAT HAD BEEN PROVIDED, HOW WE MIGHT~~  
15 ~~DETERMINE IF THERE WAS INDEED A PATTERN OF VIOLENT~~  
16 ~~BEHAVIOR BECAUSE THERE WERE ALLEGATIONS THAT WERE BEING~~  
17 ~~MADE -- WE DID NOT HAVE ANY, YOU KNOW, INFORMATION OTHER~~  
18 ~~THAN WHAT WAS PROVIDED US. AND SO WE DISCUSSED HOW~~  
19 ~~THAT MIGHT BE ACCOMPLISHED.~~

20 ~~ONE OF THE POTENTIAL WAYS TO DO THAT WOULD~~  
21 ~~HAVE BEEN FOR THE CHP TO HAVE CONVERSATIONS WITH LOCAL~~  
22 ~~LAW ENFORCEMENT AGENCIES TO SEE IF THERE HAD BEEN ANY~~  
23 ~~ISSUES RELATED TO VIOLENT BEHAVIOR -- SUBSEQUENTLY THAT~~  
24 ~~EFFORT HAS NOT BEEN UNDERTAKEN. WE'RE STILL DISCUSSING~~  
25 ~~WITH COUNSEL ON HOW WE WOULD PROCEED WITH THAT, IF WE~~

1 DO IN FACT PROCEED, IF THAT'S THE NATURE.

2 Q YOU REQUESTED THE DIRECTOR OF THE CHP TO  
3 CONDUCT AN INVESTIGATION INTO THE SAN DIEGO MINUTEMEN;  
4 IS THAT RIGHT?

5 MR. MUELLER: MISSTATES HIS TESTIMONY.

6 BY MR. FUSELIER:

7 Q IS THAT IN ESSENCE WHAT HAPPENED?

8 A I DON'T THINK I WOULD CHARACTERIZE IT THAT  
9 WAY. I TALKED TO THEN COMMISSIONER BROWN ABOUT HOW WE  
10 MIGHT ACCOMPLISH GETTING INFORMATION RELATIVE TO THE  
11 ALLEGATIONS THAT HAD BEEN RAISED BY THE LATINO CAUCUS.  
12 HE -- IN THE COURSE OF THAT DISCUSSION, HE MENTIONED  
13 THAT THERE WAS A LAW ENFORCEMENT GROUP LOCALLY -- LOCAL  
14 LAW ENFORCEMENT, INCLUDING CITIES AND COUNTIES, THAT  
15 MET REGULARLY, AND THAT ONE WAY TO ACCOMPLISH THAT --  
16 IF YOU WANT TO CALL THAT AN INVESTIGATION --  
17 ACCOMPLISH -- WAS THERE ANY INDICATION FROM THOSE FOLKS  
18 RELATIVE TO A PATTERN OF VIOLENT BEHAVIOR ON THE PART  
19 OF THE SAN DIEGO MINUTEMEN.

20 Q SO YOU REQUESTED AN INFORMAL  
21 INVESTIGATION?

22 MR. MUELLER: MISSTATES HIS TESTIMONY.

23 BY MR. FUSELIER:

24 Q I MEAN, IT IS GOING TO COME DOWN TO THAT  
25 SOMEHOW SOME WAY. LET'S SEE IF I GOT IT. YOU GO TO

1 THE CHP -- YOU TALK TO THE DIRECTOR -- AND YOU SAY TO  
2 HIM -- I NEED TO KNOW IF THESE PEOPLE ARE VIOLENT -- FIND  
3 OUT FOR ME -- HOW CAN WE DO THAT?"

4 AND HE SAYS, "WELL, WHAT WE CAN DO IS WE CAN  
5 PUT THE WORD OUT IN THE COMMUNITY AND SEE IF WE GET ANY  
6 FEEDBACK ABOUT THEM."

7 I MEAN, I KNOW I HAVE SUMMARIZED THAT AND  
8 PARAPHRASED IT, BUT IN ESSENCE, ISN'T THAT WHAT  
9 HAPPENED?

10 A AND I'M NOT TRYING TO BE EVASIVE HERE, BUT  
11 FIRST OF ALL, IT IS VERY APPROPRIATE THAT I WOULD TALK  
12 TO THE COMMISSIONER.

13 Q I NEVER QUESTIONED THE APPROPRIATENESS.

14 A I UNDERSTAND THAT. AND, ALSO, IN THE COURSE  
15 OF THE CONVERSATION, IT WASN'T A MATTER OF REQUESTING  
16 THAT THE CHP DO ANYTHING OR TAKE ANY ACTION. I ASKED  
17 HIM HOW WE COULD ACCOMPLISH A REVIEW OF THESE  
18 ALLEGATIONS. AND HE SUGGESTED THAT A WAY TO DO THAT  
19 WOULD BE TO TALK WITH REPRESENTATIVES OF LAW  
20 ENFORCEMENT -- OF LOCAL LAW ENFORCEMENT WITH THE  
21 PURPOSE OF DETERMINING WHETHER OR NOT THERE WAS ANY  
22 HISTORY OR EXPERIENCE THAT WOULD INDICATE A PATTERN OF  
23 VIOLENT BEHAVIOR ON THE PART OF THE MINUTEMEN.

24 Q WE'VE BEEN DOWN THAT ROAD THREE TIMES. SO  
25 THAT HAPPENED --

1 A YES

2 Q -- HOWEVER YOU WANT TO CHARACTERIZE IT.

3 A AS I DESCRIBED, YES.

4 Q AND THEN WHO DID YOU TELL THAT THE CHP WAS  
5 INVESTIGATING THE SAN DIEGO MINUTEMEN?

6 A I DIDN'T TELL ANYBODY THAT THE CHP WAS  
7 INVESTIGATING THE SAN DIEGO MINUTEMEN. THE DISTRICT,  
8 INCLUDING THE PUBLIC INFORMATION OFFICER, WAS AWARE  
9 THAT I HAD TALKED TO THE CHP.

10 Q WHY WAS HE AWARE OF THAT?

11 A BECAUSE I WAS IN TOUCH WITH PEDRO  
12 ORSO-DELGADO ON MOST ASPECTS OF THIS PARTICULAR  
13 INVESTIGATION.

14 Q I'M GETTING LOST HERE. WHO WENT WITH YOU TO  
15 SEE MR. BROWN?

16 A I TALKED TO MIKE BROWN BY TELEPHONE.

17 Q OKAY. SO THERE IS NOBODY ELSE PRESENT BUT  
18 YOU AND MR. BROWN IN THIS CONVERSATION?

19 A THAT CONVERSATION, THAT'S TRUE.

20 Q WAS THERE A SUBSEQUENT CONVERSATION ABOUT  
21 THIS ISSUE, THE SAN DIEGO MINUTEMEN?

22 A I THINK WE HAD A COUPLE OF ADDITIONAL  
23 CONVERSATIONS THAT AGAIN FOCUSED ON TIMING OF WHEN WE  
24 MIGHT HAVE THAT -- THE MEETING BETWEEN THE LOCAL LAW  
25 ENFORCEMENT FOLKS AND THE CHP.